

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:13-CR-35-BR
No. 7:16-CV-183-BR

KEVIN WADE,)	
)	
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

This matter is before the court on petitioner’s 10 January 2020 motion for reconsideration of the court’s 30 September 2019 order dismissing his 28 U.S.C. § 2255 motion. (DE # 89.) In that order, the court concluded petitioner was not entitled to habeas corpus relief because Hobbs Act robbery, which served as the predicate offense for petitioner’s 18 U.S.C. § 924(c) conviction, remains a crime of violence under § 924(c)(3)(A). (DE # 79, at 2.) Petitioner argues that this conclusion is incorrect because he was convicted of Hobbs Act *conspiracy*, rather than Hobbs Act *robbery*. (See Mot., DE # 89, at 1.)

Although petitioner seeks relief under Federal Rule of Civil Procedure 59(e), he is attempting to relitigate the claim presented in his § 2255 motion, and therefore, the court construes his motion as a second or successive § 2255 motion. This court lacks jurisdiction to rule on the motion absent petitioner obtaining the Fourth Circuit Court of Appeals’ authorization. See 28 U.S.C. §§ 2244(b)(3)(A), 2255(h). Petitioner’s motion is DISMISSED WITHOUT PREJUDICE. The court finds that petitioner has not made “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Pursuant to Rule 11(a) of the Rules

Governing Section 2255 Proceedings, a certificate of appealability is DENIED.

This 3 March 2020.

A handwritten signature in green ink, reading "W. Earl Britt", positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge